IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-408

INGALLS SHIPBUILDING CORPORATION,
DIVISION OF LITTON SYSTEMS, INC.,
Petitioner,

versus

DOROTHY T. MORGAN, ERNEST T. MORGAN, JR.,
TIMOTHY E. MORGAN,
Claimants-Respondents,

DIRECTOR, OFFICE OF WORKERS' COMPENSATION
PROGRAMS,
Respondent.

BRIEF OF AMICUS CURIAE SHIPBUILDERS COUNCIL OF AMERICA

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

COURT DECISIONS

TABLE OF AUTHORITIES (Continued)

TABLE OF AUTHORITIES (Continued)

TABLE OF AUTHORITIES (Continued)

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AMICUS CURIAE BRIEF OF THE SHIPBUILDERS COUNCIL OF AMERICA

The Shipbuilders Council of America, as *Amicus Curiae*, urges that Petitioner's prayer be granted and that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit which affirmed a decision of the Benefits Review Board, U. S. Department of Labor, in Respondent's favor.

STATEMENT OF INTEREST OF AMICUS CURIAE

This *Amicus Curiae* Brief is filed on behalf of Shipbuilders Council of America, an industry association of the major shipbuilders, ship repairers, and component suppliers in the United States. Sixteen shipyards comprise its membership along with four major shipyard association members and fifteen allied industry members. Preliminary 1976 data made available by the U. S. Bureau of Labor Statistics showed that the total employment of shipyards reached a high of 169,900 in October. The majority of employees working in private shipyards are employed by members of the Shipbuilders Council of America.

The shipbuilding industry has been adversely impacted by the unresolved jurisdiction and coverage disputes. Immeasurable expense and penalties have been occasioned as a direct consequence of the uncertainty of the 1972 coverage and jurisdiction amendments to the Longshoremen and Harbor Workers' Compensation Act (hereinafter referred to as LHWCA).

The Supreme Court has not reviewed any jurisdictional case concerning the shipyard worker. This Court's decision in *Northeast Marine Terminals v. Caputo, I.T.O. v. Blundo*[1], did not establish a test dispositive of the jurisdictional issues for shipyard workers. The instant case represents only one of hundreds, if not thousands, of cases concerning employees of shipyards wherein the jurisdictional

1 *Northeast Marine Terminals v. Caputo, I.T.O. v. Blundo,* ___ U.S. ___, 97 S.Ct. 2348 (1977).

and coverage issue is existent. If the LHWCA is to apply within a constitutional framework, a workable test must be fashioned to allow a precise determination of which shipyard workers are covered by the LHWCA. *Amicus* believes its experience and knowledge of shipyards and its awareness of the problems facing the industry can materially assist the Supreme Court in forging a workable test for the determination of jurisdiction and coverage.

Amicus submits the final determination of the jurisdictional and coverage issue will significantly reduce litigation.

The *Amicus* has obtained the written consent of all parties in interest in the present action prior to submitting its Brief.

The Shipbuilders Council of America prays that it be allowed to submit its Brief as *Amicus Curiae* and that this Court grant *certiorari* to Ingalls Shipbuilding Corporation.

ARGUMENT

The threshold question presented herein is whether Congress, by enacting the 1972 amendments to the LHWCA, intended to provide benefits under that Act as a result of Morgan's death. The intent of Congress is best determined by statutory construction of the amendment, together with its legislative history. Accordingly, the importance of prior jurisprudence cannot be diminished.

The historical development of the Longshoremen and Harbor Workers' Compensation Act has been often and fully discussed and need not be repeated in detail. The keel was laid with the decision of *Southern Pacific Company v. Jensen*,[2] which held that the individual states had exceeded their authority in attempting to provide state compensation benefits to a longshoreman injured aboard navigable waters. However, shore-side injuries to longshoremen were compensable under state statutes.[3]

Congressional attempts to allow states to provide compensation remedies to injuries occurring aboard navigable waters were held to constitute an unlawful delegation of Congressional power.[4] These decisions led Congress, in 1927, to enact the LHWCA to fill the void and provide a federal compensation remedy for injuries occurring on navigable waters where recovery could not validly be provided through a state compensation statute.[5] While the latter phrase brought on the sometimes confusing concept of the "twilight zone",[6] the waters edge — often referred to as the *Jensen* Line — was held to be the dividing line between state and federal coverage. The twilight zone concept removed some of the inequities for longshoremen or ship repairmen.[7]

2 *Southern Pacific Company v. Jensen*, 244 U.S. 205, 37 S.Ct. 524, 61 L.Ed. 1086 (1917).

3 *State Industrial Commission v. Nordenholt Corp.*, 259 U.S. 263, 42 S.Ct. 473, 66 L.Ed. 933 (1922).

4 *Washington v. W. C. Dawson & Co.*, 264 U.S. 219, 44 S.Ct. 302, 68 L.Ed. 646 (1924); *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 40 S.Ct. 438, 64 L.Ed. 834 (1920).

5 44 Stat. 1424, 33 U.S.C.A. § 901-950 (1927).

6 Gilmore & Black, *The Law of Admiralty*, § 6-49 (2d Ed. 1975).

7 *Swanson v. Mirra Bros., Inc.*, 328 U.S. 1, 66 S.Ct. 869, 90 L.Ed. 1045 (1946); *Davis v. Department of Labor and Industries*, 317 U.S. 249, 63 S.Ct. 225, 87 L.Ed. 246 (1942); *Parker v. Motorboat Sales*, 314 U.S. 244, 62 S.Ct. 221, 86 L.Ed. 184 (1941).

Shipbuilders engaged in new construction of vessels were not covered by the LHWCA until this Court's decision of *Calbeck v. Travelers Ins. Co.*[8] The intent of Congress was viewed "to exercise its full jurisdiction seaward of the *Jensen* Line and to cover all injuries on navigable waters, whether or not state compensation was also available in particular situations."[9] In *Nacirema Operating Co. v. Johnson*,[10] the Court again interpreted the Longshoremen and Harbor Workers' Compensation Act as not providing coverage to longshoremen on the shoreward side of the *Jensen* Line even though injured while loading or unloading a vessel.

In concluding the opinion of the majority in *Nacirema*, Justice White wrote:

> There is much to be said for uniform treatment of longshoremen injured while loading or unloading a ship. But even construing the Extension Act to amend the Longshoremen's Act would not affect this result, since longshoremen injured on a pier by pier-based equipment would still remain outside the act. In construing the Longshoremen's Act to coincide with the limits of admiralty jurisdiction — whatever they may be and however they may change — simply replaces one line with another whose uncertain contours could only perpetuate on the landward side of the *Jensen Line*, the same confusion that previously

8 *Calbeck v. Travelers Ins. Co.*, 370 U.S. 114, 82 S.Ct. 1196, 8 L.Ed.2d 368 (1962).

9 *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 221-222, 90 S.Ct. 347, 353, 24 L.Ed.2d 371, 377 (1969).

10 *Id.*

existed on the seaward side. While we have no doubt that Congress had the power to choose either of these paths in defining the coverage of its compensation remedy, the plain fact is that it chose instead the line in *Jensen* separating water from land at the edge of the pier. The invitation to move that line landward must be addressed to Congress, not to this Court."[11]

The invitation extended to Congress to expand coverage of the Act shoreward was not the primary motivating force behind the 1972 amendments. The more significant considerations then appeared to be the elimination of the Sieracki-Ryan[12] doctrine which allowed injured workers to circumvent the longshoremen's act through tort actions against vessels which would almost always recover over against the employer.

Less notoriety was given to the attempt of Congress to correct the disparity in benefits payable to longshoremen and harbor workers injured on the Calbeck side of the *Jensen* Line from the benefits available to the very same longshoremen and harbor workers injured on the *Nacirema* side of the *Jensen* Line while performing virtually the same work. To alleviate this situation, Congress amended the coverage section as follows:

11 *Id.*, 396 U.S. at 224, 90 S.Ct. at 354.

12 *Seas Shipping Co. v. Sieracki*, 328 U.S. 25, 66 S.Ct. 872, 90 L.Ed. 1099 (1946); *Ryan Stevedoring Co. v. Pan Atlantic S.S. Corp.*, 350 U.S. 124, 76 S.Ct. 232, 100 L.Ed. 133 (1956). As respects shipbuilders and ship repairmen seek contrary decisions. *Gay v. Ocean Transport and Trading, Ltd.*, 546 F.2d 1233 (5th Cir. 1977); *Smith v. M/V CAPT. FRED*, 546 F.2d 119 (5th Cir. 1977); *Griffith v. Wheeling Pittsburgh Steel Corp.*, 521 F.2d 31 (3rd Cir. 1977) *cert. den.*, 423 U.S. 1054.

"Compensation shall be payable under this Act in respect of disability or death of any employee, but only if the disability or death results from an injury occurring upon the navigable waters of the United States (including any adjoining pier, wharf, drydock, terminal, buildingway, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, or building a vessel) . . .[13]

Congress also redefined the term "employee" to include

". . . any person engaged in maritime employment, including any longshoremen or other person engaged in longshoring operations, and any harbor worker including a ship repairman, shipbuilder, and ship breaker, but such term does not include a master or member of a crew of any vessel, or any person engaged by the master to load or unload or repair any small vessel under eighteen tons net."[14]

Reference to the legislative history concerning the landward extension of coverage clearly indicates that by the above quoted amending language, Congress only meant to resolve the *Calbeck-Nacirema-Jensen* problem. Congress did not intend to extend coverage to workers who would not have been in a *Calbeck* situation — on navigable waters for at least a portion of their work activity. House Report No. 92-1441 contains the following pertinent language with respect to the extension of coverage to shoreside areas:

13 33 U.S.C.A. § 903(a) as amended (1972).

14 33 U.S.C.A. § 902(3) as amended (1972).

"Present act, insofar as longshoremen and shipbuilders and repairmen are concerned, covers only injuries which occur 'upon the navigable waters of the United States.' Thus, coverage of the present act stops at the water's edge; injuries occurring on land are covered by State Workmen's Compensation laws. The result is a disparity in benefits payable for death or disability for the same type of injury depending on which side of the water's edge and in which State the accident occurs.

* * *

It is apparent that if the Federal benefit structure embodied in the Committee bill is inactive, there would be a substantial disparity in benefits payable to a permanently disabled longshoreman, depending on which side of the water's edge the accident occurred, if State laws are permitted to continue to apply to injuries occurring on land. It is also to be noted that with the advent of modern cargo handling techniques, such as containerization and the use of LASH-type vessels, more of the longshoreman's work is performed on land than heretofore.

The Committee believes that the compensation payable to a longshoreman or a shiprepairman or builder should not depend on the fortuitous circumstances of whether the injury occurred on land or over water. Accordingly, the bill would amend the Act to provide coverage of longshoremen, harbor workers, ship repairmen, ship builders, ship breakers,

or other employees engaged in *maritime employment* (excluding masters and members of the crew of a vessel) if the injury occurred *either* upon the navigable waters of the United States or any adjoining pier, wharf, drydock, terminal, buildingway, marine railway, or other area adjoining such navigable waters customarily used by an employer in loading, unloading, repairing, or building a vessel.

The intent of the Committee is to permit a uniform compensation system to apply to employees who would otherwise be covered by this Act for part of their activity . . . The Committee *does not intend* to cover employees who are not engaged in loading, unloading, repairing, or building a vessel, just because they are injured in an area adjoining navigable waters used for such activity. Thus, employees whose responsibility is only to pick up stored cargo for further transshipment would not be covered, nor would purely clerical employees whose jobs do not require them to participate in the loading or unloading of cargo."[15]

Accordingly, Morgan, the decedent in the instant case, would not be covered under the Longshoremen and Harbor Workers' Compensation Act as amended in 1972 since it is clear that none of his duties ever brought him over the navigable waters of the United States and he would not have been covered by the pre-1972 Act for any part of his work activity. The

15 3 U.S. Code Congressional and Administrative News, pp. 4707 through 4808 (1972) (emphasis added).

decedent's total lack of connexity with the navigable waters of the United States denies him the status of one engaged in "maritime employment" as the legislative history and case law dictate that term to be construed. It is the amphibious nature of the work of the longshoreman or harbor worker which now affords him coverage under the act, regardless of whether he is injured over navigable waters or on any adjoining pier, wharf, drydock, terminal, buildingway, marine railway, etc.

The new definition of the covered "employee" does away with decisions such as *Pennsylvania Railroad Co. v. O'Rourke,*[16] where under the pre-1972 Act focus was not on the individual employee, but on whether the employer had other employees engaged in maritime employment. In earlier cases, the term "maritime employment" was construed as work activity on navigable waters.[17] The issue before the Fifth Circuit in *Nalco Chemical Corp. v. Shea,*[18] was whether Nalco fell within the definition of employer under Section 902(4) of the Act. The Fifth Circuit focused on the activities of the deceased employee in order to determine whether his employer fell within the definition of Section 902(4). After noting that the Act is to be liberally construed in favor of the injured employees, the Court went on to state:

16 *Pennsylvania Railroad Co. v. O'Rourke*, 344 U.S. 334, 73 S.Ct. 302, 97 L.Ed. 367 (1953).

17 *Pennsylvania Railroad Co. v. O'Rourke, Id.; Nogueira v. New York, N.H. & H.R. Co.*, 281 U.S. 128, 50 S.Ct. 303, 74 L.Ed. 754 (1930); *Parker v. Motorboat Sales, supra; Nalco Chemical Corp. v. Shea*, 419 F.2d 522 (5th Cir. 1969).

18 *Nalco, supra.*

> "We conclude that Quave's activities were sufficiently maritime to fall within the scope of 33 U.S.C. § 902(4). It is noted that this section of the Act covers all employers whose employees are engaged in maritime employment 'in whole or in part'. This becomes significant here for Quave's activities were often over water and it was over water that the fatal accident took place. His regular duties consisted in large part of traveling directly to offshore drilling platforms which he could only reach by boat or sea plane."[19]

In applying the amended act to a longshoreman injured on a pier, this Court, in *Northeast Marine Terminal Co. v. Caputo,* noted that though Congress extended the area of coverage, it did not extend the status of employees so covered. Mr. Justice Marshal noted:

> "The Act focuses primarily on occupations — longshoreman, harbor worker, ship repairman, ship builder, ship breaker. Both the text and the history demonstrate a desire to provide continuous coverage throughout their employment to these *amphibious workers* who, without the amendments, would be covered for only part of their activity. It seems clear, therefore, that when Congress said it wanted to cover 'longshoremen' it had in mind persons whose employment is such that they spend at least some of their time in indisputably longshoring operations and

19 *Id.*, 419 F.2d at 574 (citation omitted).

> who, without the amendments, would be covered only for part of their activity."[20]

Amicus submits that since the decedent herein did not occupy the status of an employee covered for any part of his activity prior to the amendments, the amendments, which only expand the situs aspect of coverage, would not now make the decedent a covered employee under the Act.

Nevertheless, certain appellate courts have ignored both the earlier case law and the legislative history leading up to the enactment of the 1972 amendments and have extended coverage under the Act to all shipyard workers who are involved in an ongoing shipbuilding operation,[21] or who have a functional relationship to shipbuilding operations.[22] The statutory construction adopted by the Fifth and Third Circuits raises serious questions as to the constitutionality of the LHWCA, and it is respectfully submitted that their unnecessary interpretation of the LHWCA renders it unconstitutional.

Acknowledging that the constitution confers upon the United States Courts all cases of admiralty and maritime jurisdiction, does Congress have the authority to expand the admiralty and maritime jurisdiction to include a federal compensation remedy to a shore-based worker for a shore-based injury simply

20 *Northeast Marine Terminal Co. v. Caputo, supra*, 97 S.Ct. 2362 (emphasis added).

21 *Ingalls Shipbuilding Corp. v. Morgan*, 551 F.2d 61 (5th Cir. 1977); *Halter Marine Fabricators, Inc. v. Nolty*, decided with *Jacksonville Shipyards, Inc. v. Perdue*, 539 F.2d 533 (5th Cir. 1976).

22 *Dravo Corp. v. Maxin*, 545 F.2d 374 (3rd Cir. 1976) and *Sea-Land Service, Inc. v. Director, Office of Workers' Compensation*, 540 F.2d 629 (3rd Cir. 1976).

because of his employment as a shipyard worker? This Court has previously recognized the power of Congress to expand admiralty and maritime jurisdiction though cautioning that the said power is not limitless. In *Detroit Trust Co. v. The Thomas Barlum*,[23] this Court held:

> "The Congress [rests] its authority upon the constitutional provisions extending the judicial power 'to all cases of admiralty and maritime jurisdiction' and conferring upon the Congress the power to make all laws which shall be 'necessary and proper' for carrying into execution all power 'vested by this Constitution in the government of the United States, or in any department or officer thereof.' Art. III, § 2; Art. I, § 8, par. 18 . . . But the grant pre-supposed a 'general system of maritime law' which was familiar to the lawyers and statesmen of the country, and contemplated a body of law with uniform operation. *The Lottawanna*, 1 Wall, 558, 574, 575 [22 L.Ed. 645]. The constitution did not undertake to define the precise limits of that body of law or to lay down a criterion for drawing the boundary between maritime law and local law. *Id.* Boundaries were to be determined in the exercise of judicial power in recognition of the purpose of the grant. 'No state law can enlarge it, nor can an act of Congress or rule of court make it broader than the judicial power may determine its true limits.' *The St. Lawrence*, 1 Black 522, 527 [17 L.Ed. 180]. The framers of the constitution did not con-

23 *Detroit Trust Co. v. The Thomas Barlum*, 293 U.S. 21, 55 S.Ct. 31, 79 L.Ed. 176 (1934).

> template that the maritime law should remain unalterable . . . The Congress thus has paramount power to determine the maritime law which shall prevail throughout the country . . . But in amending and revising the maritime law, the Congress necessarily acts within a sphere restricted by the concept of admiralty and maritime jurisdiction . . ."[24]

Though earlier court decisions are not conclusive as to the constitutional authority of Congress to expand the maritime law, such cases are indicative of the boundaries within which Congress may act. Just one year prior to the amendments in question, this Court had the opportunity to determine whether state law or federal maritime law governed the suit of a longshoreman injured on a pier by allegedly defective shore-based equipment.[25] Noting that the traditional concept of maritime tort jurisdiction reached only those torts occurring on navigable waters, the Court stated:

> "In the present case, however, the typical elements of a maritime cause of action are particularly attenuated: respondent Law was not injured by equipment that was part of the ship's usual gear or that was stored on board, the equipment that injured him was in no way attached to the ship, the forklift was not under the control of the ship or its crew, and the accident did not occur aboard ship or on the gang plank. Affirmants of the decision below would raise a host of new problems as to the standards for and limitations on the applicability of

24 *Detroit Trust Co. v. The Thomas Barlum, supra*, 293 U.S. at 42-44, 55 S.Ct. at 38. (citations and footnotes omitted).

25 *Victory Carriers v. Law*, 404 U.S. 200, 9 S.Ct. 418, 30 L.Ed.2d 383 (1971).

> maritime law to accidents on land. At least in the absence of explicit congressional authorization, we shall not extend the historic boundaries of the maritime law.[26]

Thus, extension of jurisdiction herein should conform to congressional intent to cover amphibious shipyard workers injured over land.[27] Justice White's earlier comments on the rights of the respective state governments to provide state compensation benefits in traditional areas of state law are appropriate to the question at hand:

> "We are not inclined at this juncture to disturb the existing precedents and to extend shoreward the reach of the maritime law further than Congress has approved. We are dealing here with the intersection of federal and state law. As the law now stands, state law has traditionally governed accidents like this one. To afford respondent a maritime cause of action would thus intrude on an area that has heretofore been reserved for state law, would raise difficult questions concerning the extent to which state law would be displaced or pre-empted, and would furnish opportunity for circumventing state workmen's compensation statutes. In these circumstances, we should proceed with caution in construing constitutional and statutory provisions dealing with the jurisdiction of the federal courts. As the Court declared in *Healy v. Ratta*, 292

26 *Victory Carriers v. Law, supra*, 404 U.S. at 214, 92 S.Ct. at 426 (footnote omitted).

27 See discussion at footnote 15, *supra*.

> U.S. 263, 270, 54 S.Ct. 700, 703, 78 L.Ed. 1248 (1934), 'the power reserved to the states under the constitution, to provide for the determination of controversies in their courts, may be restricted only by the action of Congress in conformity to the judiciary sections of the construction * * *. Due regard for the rightful independence of state governments, which should actuate federal courts, requires that they scrupulously confine their own jurisdiction to the precise limits which [a federal] statute has defined.' "[28]

The current test for maritime tort jurisdiction not only requires the locality of the accident on navigable waters but also requires that the event giving rise thereto have a sufficient relationship to traditional maritime activity.[29] Accidents occurring on land or extensions thereof including piers and wharves adjacent to the navigable waters have been considered outside of the sphere of admiralty and maritime jurisdiction.[30]

Our statutory exception to the general rule exists by way of the Admiralty Extension Act,[31] in which Congress brought within the admiralty and maritime jurisdiction of the federal courts claims for damage or injury done or consummated on land by a vessel on

28 *Victory Carriers v. Law, supra*, 404 U.S. at 212, 92 S.Ct. at 425.

29 *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 93 S.Ct. 493, 34 L.Ed.2d 454 (1972).

30 *Rodrigue v. Aetna Casualty and Surety Co.*, 395 U.S. 352, 89 S.Ct. 1835, 23 L.Ed.2d 360 (1969); *Victory Carriers, Inc. v. Law, supra*; *Hastings v. Mann*, 340 F.2d 910 (4th Cir. 1964); *Peytavin v. Government Employees Insurance Company*, 453 F.2d 1121 (5th Cir. 1972).

31 46 U.S.C.A. Section 740 (1948).

navigable waters. In upholding the constitutionality of the Admiralty Extension Act, the 9th Circuit Court of Appeals observed:

> "While the *exercise* of admiralty jurisdiction by the United States courts did not extend to injuries caused by ships to land structures prior to the passage of the Admiralty Extension Act in 1948, we are of the opinion that such accidents are both reasonably and historically within the concept of maritime affairs, The Barlum, 293 U.S. 21, 45, 55 S.Ct. 31, 79 L.Ed. 176, and were, therefore, within the admiralty and maritime jurisdiction, as known and understood in the United States when the constitution was adopted."[32]

The very language of the Admiralty Extension Act demonstrates that the shoreside damage or injury must have a direct connection with the navigable waters, the basis for inclusion of such claims in the admiralty and maritime jurisdiction.

Another example of shore-side injuries cognizable in admiralty involve a seaman's right to maintenance and cure when injury on shore so long as the seaman was "in the service of the shop."[33] A seaman by definition is one:

> "Assigned permanently to a vessel (including special purpose structures not usually

32 *United States v. Matson Navigation Co.*, 201 F.2d 610 (9th Cir. 1953), p. 615.

33 *Aguilar v. Standard Oil Co. of N.J.*, 318 U.S. 724, 63 S.Ct. 930, 87 L.Ed. 1107 (1943).

> employed as a means of transport by water but designed to float on water) or performed a substantial part of his work on the vessels; and . . . the capacity in which he was employed or the duties which he performed contributed to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in times of its maintenance during its movement or during anchorage for its future trips."[34]

The duties of a seaman and his relationship to navigable waters provide the basis for the exercise of admiralty and maritime jurisdiction over his shoreside injuries sustained while in the service of the ship. As can be readily discerned, Congress may validly extend the admiralty and maritime jurisdiction to cover shoreside accidents or injuries provided that there exists a direct, physical contact with navigable waters — the historic and traditional basis for maritime and admiralty jurisdiction. The Act as construed by the 9th and 5th Circuits[35] providing coverage to shipyard workers who have no direct, physical contact with navigable waters constitutes an unwarranted extension which renders the 1972 amendments unconstitutional. Obviously, since Congress felt constrained by "navigable waters" criteria, it was not the intent of Congress to extend jurisdiction to non-amphibious workers and thereby create a challenge to the Act's constitutionality.

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34 *Offshore Co. v. Robison*, 266 F.2d 769, 779 (5th Cir. 1959).

35 See discussion at footnotes 21 and 22, *supra*.

CONCLUSION

Prior to the 1972 Amendments to the LHWCA a shipyard worker was covered only when injured seaward of the *Jensen* Line. The 1972 amendments serve to extend the *Jensen* Line shoreward. The avowed purpose for extending the *Jensen* Line shoreward was to prevent an inequity occurring to an amphibious worker who might be injured shoreward of the *Jensen* Line. Hence, subsequent to the 1972 amendments, shipyard workers who are engaged, at least in part, in work activities seaward of the *Jensen* Line will be covered under the provisions of the LHWCA for injuries occurring on land. If jurisdiction under LHWCA is extended to shore-side workers for shore-side injuries, an unnecessary interpretation of the LHWCA would render the 1972 amendments unconstitutional and would promote a continuing states versus federal conflict. Establishing the line of demarcation between amphibious and non-amphibious workers confines federal jurisdiction to the precise limits the statute and history of its enactment have defined.

The *Amicus* submits that the reasoning of the Ninth Circuit Court of Appeals in *Weyerhauser Company v. Gilmore*,[36] should guide this Court in determining these crucial issues. As that Court states:

> "[i]n expanding the maritime situs element of the Act, however, *Congress clearly did not intend to broaden the class of covered employees to include anyone injured in an adjoining area.*"[37] **(Emphasis added)**

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36 *Weyerhauser Co. v. Gilmore*, 528 F.2d 957, 961-62 (9th Cir. 1975), *cert. denied* ___ U.S. ___, 97 S.Ct. 179 (1976).

37 *Id.* at 960.

> "We join the observation of the Law Judge that the intent of Congress in extending the Act was not to 'open the doors' to all employees, but to minimize the adverse effect of a shoreside location or situs when a maritime employee is injured."[38]

The 1972 amendments to the Act were designed to extend the situs requirement to injuries occurring on land for amphibious workers engaged in maritime employment at time of injury.

The *Amicus*, Shipbuilders Council of America, respectfully requests this Honorable Court to grant certiorari to the Ingalls Shipbuilding Corporation and to allow Shipbuilders Council of America to participate in this matter as *Amicus Curiae*.

Respectfully submitted,

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38 *Id.* at 961.